

SENATE BILL 1183
By Ketron

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18 and Title 65, Chapter 4, relative to unsolicited electronic mail.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding sections 2 through 9 of this act as a new part thereto.

SECTION 2. As used in this part:

(1) "Electronic mail address" means a destination, commonly expressed as a sequence of characters, to which electronic mail may be sent or delivered;

(2) "Initiate the transmission" means the action by the original sender of an unsolicited electronic mail solicitation that results in receipt by a subscriber of that solicitation;

(3) "Subscriber" means any person, corporation, partnership, or other entity who has subscribed to an interactive computer service and has been designated with one (1) or more electronic mail addresses; and

(4) "Unsolicited electronic mail" means any communication through an interactive computer service for the purpose of encouraging the purchase or rental of, or

investment in, property, goods, or services, other than a communication responding to an electronic mail message initiated by the subscriber. An electronic mail communication to a subscriber that has an ongoing business relationship with the sender shall not be considered unsolicited electronic mail for the purpose of this part.

SECTION 3. No person or entity shall, after July 1, 2004, initiate the transmission of any unsolicited electronic mail to any subscriber in this state who has given notice to the Tennessee regulatory authority, in accordance with rules promulgated pursuant to this part, of such subscriber's objection to receiving unsolicited electronic mail.

SECTION 4.

(a) The Tennessee regulatory authority shall establish and provide for the operation of a state database to compile a list of electronic mail addresses of subscribers who object to receiving unsolicited electronic mail. The Tennessee regulatory authority shall have such database in operation no later than July 1, 2004.

(b) Information contained in the database established pursuant to this section shall be used only for the purpose of compliance with this section or in a proceeding or action pursuant to this part. Such information shall not be considered a public record pursuant to § 10-7-403.

(c) No later than February 1, 2004, the Tennessee regulatory authority shall promulgate rules and regulations to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 5. Any person or entity who initiates the transmission of any electronic mail message to any subscriber in this state for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, other than a communication responding to an electronic mail message initiated by the subscriber, shall, at the beginning of such message, clearly state the identity of the person or entity initiating the transmission.

SECTION 6. The Tennessee regulatory authority may initiate proceedings relating to a knowing violation of this part. Such proceedings may include, without limitation, an injunction, a civil penalty up to a maximum of five thousand dollars (\$5,000) for each knowing violation, and additional relief in any court of competent jurisdiction. The Tennessee regulatory authority may issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of this part.

SECTION 7. It shall be a defense in any action or proceeding brought pursuant to this part that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent the transmission of unsolicited electronic mail messages in violation of this part.

SECTION 8. No action or proceeding may be brought pursuant to this part:

- (1) More than one (1) year after the person bringing the action knew or should have known of the occurrence of the alleged violation; or
- (2) More than one (1) year after the termination of any proceeding or action arising out of the same violation or violations by the state, whichever is later.

SECTION 9. No telecommunications utility or Internet service provider that carries an unsolicited E-mail message over its network shall be held liable for violations of this part when another person or entity initiates the transmission of that message.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.